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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1284

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

WILLIAM EVERHARDT, ET AL.,
Appellant,

v.

CITY OF NEW ORLEANS, ET AL.,
Appellees.

BRIEF OF AMICUS CURIAE AMERICAN MOTORCYCLE ASSOCIATION

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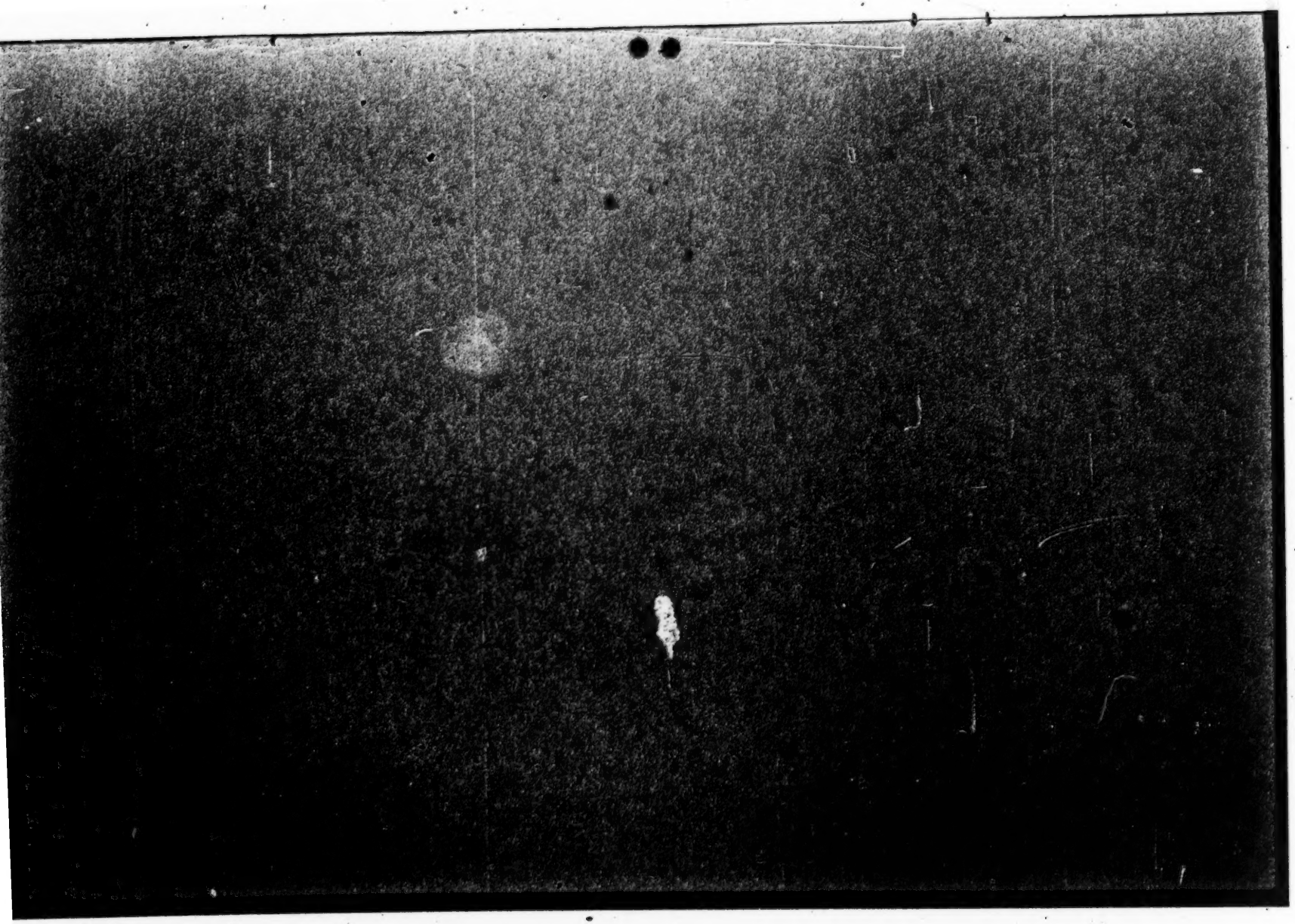

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By written consents of the Appellants and of the Appellees which are submitted herewith, the American Motorcycle Association files this brief as *amicus curiae*.

INTEREST OF THE AMICUS CURIAE

The American Motorcycle Association is an organization of approximately 110,000 motorcycle riders from every state of the Union, banded together for the purpose, among others, of promoting safety in the operation of motorcycles. For the past several years, the American Motorcycle Association has studied the use of protective helmets but is aware that there is no unanimity of opinion regard-

ing the effect of the use of helmets in relation to the safety of operating a motorcycle. Many of the members of the American Motorcycle Association are of the opinion that the wearing of protective helmets actually impairs their ability to drive safely because it limits their field of vision or hearing, because it is hot and uncomfortable, and because it is itself distracting.

American Motorcycle Association has an interest in this appeal for the reason that cases involving the prosecution of its members for violations of compulsory motorcycle safety helmet statutes are pending in the appellate courts of at least five states.

For these reasons, as well as the belief of the Association and its members that compulsory safety helmet statutes constitute an unlawful infringement of a citizen's basic constitutional right of freedom to choose how best to provide for his own safety, the American Motorcycle Association submits that it is of great interest to the Association and its members that the Court accept jurisdiction and consider this matter on its merits.

I. THE SUDDEN PROLIFERATION OF STATUTES WHICH FORCE A LARGE SEGMENT OF THE MOTORING PUBLIC TO WEAR A DEVICE TO PROTECT THEMSELVES FROM INJURY IN THE EVENT OF ACCIDENT WHEN, IN THEIR JUDGMENT, THE DEVICE IS ITSELF LIKELY TO CAUSE AN ACCIDENT, MAKES THE CASE AT BAR OF GREAT NATIONAL INTEREST.

At the present time there are approximately 2,500,000 motorcycles registered in the United States. No doubt the total number of motorcycle riders and passengers, who are compelled to wear helmets by New Orleans City Ordinance 3536 and similar statutes, greatly exceed that number.

Spurred by the conditioning of the granting of federal highway aid upon the instituting of state safety programs, which must include a compulsory motorcycle safety helmet statute (The Highway Safety Act of 1966, 23 U.S.C. 402, 403), at least forty states have adopted such statutes. Most state statutes were adopted within the last two years.

The state statutes, like the New Orleans ordinance, compel motorcycle riders and passengers, under threat of criminal penalty, to wear approved safety helmets at all times.

In the torrent of litigation, both criminal prosecutions and declaratory judgment actions, which has followed the adoption of these statutes, four state supreme courts have found the statutes to be constitutional: Louisiana in *Everhardt v. City of New Orleans,* below; Massachusetts in *Commonwealth v. Howie,* ... Mass. ..., 238 N. E. 2d 373 (1968); cert. den. 21 L. Ed. 464 (1968); Rhode Island in *State v. Lombardi,* ... R.I. ..., 241 A. 2d 625 (1968); and Wisconsin in *Bisenius v. Karns,* ... Wis. ..., ... N.W. 2d ... (No. 157, decided March 7, 1969).

The state courts of appeal have reached conflicting results. A North Carolina court of appeals found the statute constitutional, *State v. Anderson,* 164 S.E. 2d 48 (N.C. App. 1968). A Louisiana court of appeals found the statute unconstitutional in *Everhardt v. City of New Orleans,* ... La. App. ..., 208 So. 2d 423 (4th Cir. 1968). A Michigan court of appeals found the statute unconstitutional, *American Motorcycle Ass'n. v. Davids,* 9 Mich. App. 655, 158 N.W. 2d 72 (1968), whereupon the state legislature adopted a new statute potentially more dangerous because, rather than requiring that the helmet be worn, it requires that the helmet be carried on the cycle.

At least two attorneys general have advised that their statutes are unconstitutional: Oklahoma, Opinion of At-

torney General No. 68-267 (Dec. 31, 1968); New Mexico, Opinion of Attorney General No. 66-15 (Feb. 1, 1966).

In addition to the above cases, your *amicus curiae* is aware of the trial of nineteen motorcycle helmet cases in ten additional states since 1967. In eight of these the trial court ruled the statutes unconstitutional. Thus, in summary, at the present time statutes compelling motorcycle riders to wear helmets have been ruled unconstitutional in Arizona, Florida, Michigan, Missouri, New Mexico, Oklahoma, and Washington.

As will be more fully explained in Part II below, the enactment of compulsory motorcycle helmet statutes raises crucial constitutional issues centering on the freedom of United States citizens to choose the best means to provide for their own safety. Furthermore, the uncontroverted testimony in the case at bar was that motorcycle helmets actually impair the ability of the driver to operate his vehicle safely due to restricting vision and hearing and the heat and annoyance of the helmets. Finally, there is a compelling need for a ruling by this Court to obtain national uniformity in regulation of traffic upon the highways of the country. For these reasons, it is earnestly submitted that the case at bar is of great and compelling national interest.

II. THE NEW ORLEANS MOTORCYCLE HELMET ORDINANCE CONSTITUTES AN UNCONSTITUTIONAL EXTENSION OF THE CITY'S POLICE POWER SO AS TO BE AN INVASION OF FUNDAMENTAL RIGHTS RESERVED TO THE INDIVIDUAL BY THE BILL OF RIGHTS AND THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Compulsory motorcycle helmet statutes, such as the New Orleans ordinance, are enacted under the guise of government's police power; that is, the power of the city to enact highway regulations to provide for the safe travel of its citizenry. There is, in fact, no controversy in this case as to the standards to be applied in limiting the exercise of police power. A state's police power can be properly exercised only when there is a reasonable relationship to the *public* health, safety, morals, or welfare. 16 Am. Jur. 2d, Constitutional Law, Sec. 277.

What is at issue is the fundamental question of whether, in the case of motorcycle helmets, the city can compel an individual to wear a device which protects only the wearer, and the wearing of which does not promote the safety or welfare of any other member of society. Included in this question is the further issue of whether the right of privacy included in the guarantees of the first, fourth, fifth, and ninth amendments to the United States Constitution, and applied to the states through the due process clause of the fourteenth amendment, includes the right of a motorcyclist to choose the method of operating his cycle which best provides for his own safety, when that choice does not act in any way to endanger other users of the highways.

Courts holding compulsory helmet statutes constitutional have sought to find a link between wearing the helmets and the safety of others based upon the following rationale. First, there is some possibility, according to those courts, that a stone or bug could strike the unprotected head of a cyclist, thereby causing him to lose control and swerve into another vehicle, e.g. *State v. Lombardi,* supra. But there is no empirical evidence, or evidence in the record of this case, to support the hypothesis of those courts.

Even if bugs or flying stones were a danger, surely a compulsory windshield on the motorcycle is a more practical, constitutionally permissible alternative, as was suggested in *American Motorcycle Ass'n. v. Davids,* supra. Second, the courts raised the spectre of injured cyclists or their dependents becoming wards of the state, e.g. *State v. Lombardi,* 241 A. 2d 625, 627. Not even statutes which regulate the consumption of liquor have been justified upon such a basis. *The Boston Co. v. Massachusetts,* 97 U.S. 25 (1878). These statutes or ordinances cannot be justified on the ground that any person other than the wearer is protected thereby.

The case at bar involves a right, like the right to read what one pleases in his own home, *Stanley v. Georgia,* 37 U.S. L. Week 4315 (U.S. S. Ct., 1969), to be secure from unlawful searches, *Mapp v. Ohio,* 367 U.S. 643 (1961), to not have one's wire tapped, *Berger v. New York,* 388 U.S. 41 (1967), and to use contraceptives, *Griswold v. Connecticut,* 381 U.S. 479 (1965). At issue is the right of an individual to provide for his health and safety in the way he deems best.

Surely, of all powers of government, the police power must be exercised with most restraint. When that power is exercised to restrict fundamental rights of individuals, it *must* be subjected to scrutiny by this Court.

SUMMARY

By definition the exercise of the police power involves the restricting of individual freedom. Fundamental liberties, however, should not be so restricted without the scrutiny of the highest court of the land. This is particularly so when the restriction is without corresponding public benefit and when circumstances have bred conflicting re-

sults in the lower courts. For these reasons, the American Motorcycle Association respectfully requests that the Supreme Court accept jurisdiction and consider this matter on its merits.

Respectfully submitted,

AMERICAN MOTORCYCLE ASSOCIATION
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